

The Honorable Lauren J. King

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN OF
WASHINGTON,

Defendant.

No. 2:21-cv-01338-LK

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action involves production of confidential, proprietary, or private information by Kaiser Foundation Health Plan of Washington (“Kaiser”) for which special protection is warranted. Accordingly, the parties to this litigation—Kaiser and Plaintiff Equal Employment Opportunity Commission (EEOC)—hereby stipulate to the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

- a. Training media and documents presented or provided to Kaiser by NeuroLeadership Institute (“NLI”), including Belong@KP materials;
- b. Medical or personal health information of any individual, including personally identifying information, to the extent this information is produced;
- c. Personally identifying information of the producing party or the producing party’s employees or patients, such as Kaiser’s system for patient billing data, account access, and other network information which allows patients to access their private medical information, social security numbers, and personal addresses and phone numbers;
- d. Any information that the producing party is obligated by contract or state or federal law or regulation to keep confidential;
- e. Any other information that constitutes or contains trade secrets pursuant to the Uniform Trade Secrets Act (“UTSA”) 18 U.S.C. Sec 1839(3)(A)-(B); and
- f. Any other information that the parties agree should be marked “Confidential Pursuant to Protective Order” in a separate written record or stipulation between the parties.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

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1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by a producing party only for prosecuting, defending, or attempting to settle this
4 litigation. Confidential material may be disclosed only to the categories of persons and under the
5 conditions described in this agreement. Confidential material must be stored and maintained by a
6 receiving party at a location and in a secure manner that ensures that access is limited to the
7 persons authorized under this agreement. All documents, testimony, and other materials
8 produced by the parties in this case and labeled “Confidential” shall be used only for the
9 purposes of this litigation, except that the EEOC may use any information designated as
10 confidential in furtherance of its law enforcement activities.

11 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the designating party, a receiving party may
13 disclose any confidential material only to:

14 (a) the receiving party’s counsel of record in this action, as well as employees
15 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

16 (b) the officers, directors, and employees (including in house counsel) of the
17 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
18 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
19 designated;

20 (c) experts and consultants to whom disclosure is reasonably necessary for
21 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
22 A);

23 (d) the court, court personnel, and court reporters and their staff;

24 (e) copy or imaging services retained by counsel to assist in the duplication of
25 confidential material, provided that counsel for the party retaining the copy or imaging service
26 instructs the service not to disclose any confidential material to third parties and to immediately
27 return all originals and copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
2 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
3 A), unless otherwise agreed by the designating party or ordered by the court. Pages of
4 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
5 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this agreement;

7 (g) the author or recipient of a document containing the information or a custodian or
8 other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or
10 referencing such material in court filings, the filing party shall confer with the designating party,
11 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
12 remove the confidential designation, whether the document can be redacted, or whether a motion
13 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
14 designating party must identify the basis for sealing the specific confidential information at issue,
15 and the filing party shall include this basis in its motion to seal, along with any objection to
16 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
17 followed and the standards that will be applied when a party seeks permission from the court to
18 file material under seal. A party who seeks to maintain the confidentiality of its information must
19 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
20 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
21 in accordance with the strong presumption of public access to the Court’s files.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
24 or non-party that designates information or items for protection under this agreement must take
25 care to limit any such designation to specific material that qualifies under the appropriate
26 standards. The designating party must designate for protection only those parts of material,
27 documents, items, or oral or written communications that qualify, so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated
8 for protection do not qualify for protection, the designating party must promptly notify all other
9 parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement (see, *e.g.*, section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or
12 discovery material that qualifies for protection under this agreement must be clearly so
13 designated before or when the material is disclosed or produced.

14 (a) Information in documentary form (*e.g.*, paper or electronic documents and
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings).
16 The designating party must affix the word "CONFIDENTIAL" to each page that contains
17 confidential material. If only a portion or portions of the material on a page qualifies for
18 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
19 making appropriate markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings. The parties
21 and any participating non-parties must identify on the record, during the deposition or other
22 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
23 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
24 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
25 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
26 confidential information at trial, the issue should be addressed during the pre-trial conference.

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1 (c) Other tangible items. The producing party must affix in a prominent place
2 on the exterior of the container or containers in which the information or item is stored the word
3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
4 the producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items does not, standing alone, waive the designating party’s
7 right to secure protection under this agreement for such material. Upon timely correction of a
8 designation, the receiving party must make reasonable efforts to ensure that the material is
9 treated in accordance with the provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
14 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
16 original designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
18 regarding confidential designations without court involvement. Any motion regarding
19 confidential designations or for a protective order must include a certification, in the motion or in
20 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
21 conference with other affected parties in an effort to resolve the dispute without court action. The
22 certification must list the date, manner, and participants to the conference. A good faith effort to
23 confer requires a face-to-face meeting or a telephone conference.

24 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
25 intervention, the designating party may file and serve a motion to retain confidentiality under
26 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
27 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those

made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

- a. promptly notify the designating party in writing and include a copy of the subpoena or court order;
- b. promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and
- c. cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

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1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-discovery
7 order or agreement that provides for production without prior privilege review. The parties
8 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

9 10. NON TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving
11 party must return all confidential material to the producing party, including all copies, extracts
12 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
13 destruction.

14 Notwithstanding this provision: (1) counsel are entitled to retain one archival copy of all
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
17 work product, even if such materials contain confidential material: and (2) this Protective Order
18 does not affect the EEOC's obligation to maintain copies of files pursuant to the Federal Records
19 Act.

20 The confidentiality obligations imposed by this agreement shall remain in effect until a
21 designating party agrees otherwise in writing or a court orders otherwise.

22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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2 DATED: June 23, 2022

*Electronic signature added per email
authority on June 23, 2022*
/s/ Raymond T. Cheung
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25 DATED: June 23, 2022

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ORDER

Pursuant to the foregoing, including the Court's correction of an apparent typo on page 2 ("USTA"), IT IS SO ORDERED.

Dated this 7th day of July, 2022.



Lauren King
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [DATE] in
the case of *Equal Employment Opportunity Commission v. Kaiser Foundation Health Plan of
Washington*, Case No.: 2:21-cv-01338-LK. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____